

Transition Services and the IDEA:
What are School Districts' Responsibilities for
Post-Secondary Education?

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I. THE APPLICABLE FEDERAL LAW

1. **2006 Part B Regulations, 34 C.F.R. 300.43(a)** – defines transition services as “a coordinate set of activities for a child with disabilities that:
 - (1) is designed to be within a results-oriented process, that is focused on improving the academic and functional achievement of the child with a disability to facilitate the child’s movement from school to post-school activities, including postsecondary education, vocational education, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation;
 - (2) is based on the individual child’s needs, taking into account the child’s strengths, preferences, and interests; and includes:
 - (i) Instruction;
 - (ii) Related services;
 - (iii) Community experiences;
 - (iv) The development of employment and other post-school adult living objectives; and
 - (v) If appropriate, acquisition of daily living skills and provision of a functional vocational evaluation.
2. **71 Fed.Reg. 46,579 (2006).** The definition of ‘transition services’ is written broadly to include a range of services, including vocational and career training that are needed to meet the individual needs of a child with a disability. Decisions regarding transition services must be made on the basis of the child’s individual needs, taking into account the child’s strengths, preferences, and interests.

¹ *This presentation is designed to provide accurate and authoritative information in regard to the subject matter covered. It is provided with the understanding that the presenter is not engaged in rendering legal counsel. If legal advice is required, the services of a competent professional should be sought. Melinda Jacobs is licensed to practice law in Tennessee. Ms. Jacobs makes no representation that she is licensed to practice law in any other state.*

3. **34 C.F.R. 300.320(b).** Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, and updated annually, thereafter, the IEP must include:
- (1) Appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and, where appropriate, independent living skills; and
 - (2) The transition services (including courses of study) needed to assist the child in reaching those goals.
4. **Section 504** does not contain any statutory or regulatory requirements for transition services. Yankton Sch. Dist. v. Schramm, 24 IDELR 704 (8th Cir. 1996).
5. **Arizona Transition Requirements:**

Beginning not later than the first IEP to be in effect when the child turns 16, or younger if determined appropriate by the IEP team, the following components must be included in the IEP:

- **Measurable Postsecondary Goals (MPGs)** - Measurable goal statements in the areas of education/training, employment, and when appropriate, independent living.
- **Updated Annually** - MPGs updated annually.
- **Based on Age-Appropriate Transition Assessments** – Assessments provide information on the student’s strengths, needs, preferences, and interests and are used to write achievable, measurable postsecondary goals.
- **Transition Services = Coordinated Set of Activities** – Transition-related services or activities that reasonably enable the student to achieve his/her MPGs.
- **Transition Services = Course of Study** – Courses that focus on improving academic and functional achievement to reasonably enable the student to achieve his/her MPGs.
- **Annual Goals** – Annual IEP goals that reasonably enable the student to achieve his/her MPGs.
- **Student Invitation** - Students at least 16 years of age must be invited to the IEP meeting when postsecondary transition services are being discussed.
- **Outside Agency Invitation (with prior consent)** – A representative of another agency that is likely to provide and/or pay for transition services who has been invited to the meeting *after consent* from the parent or student who has reached the age of majority.

Additional postsecondary transition components include:

- **Transfer of Rights at Age of Majority** - A statement informing the student that his/her rights will transfer to the student at age 18 (must be present in IEPs by age 17).
- **Summary of Performance (SoP)** – A summary of academic achievement and functional performance, including recommendations to assist an exiting student in meeting his/her MPGs for students whose eligibility terminates due to graduation from high school with a regular diploma or due to exceeding the age eligibility for FAPE under State law.

Source: Arizona Department of Education Web Site @ AZ.gov

II. RELEVANT COURT DECISIONS

1. **D.C. v. Mount Olive Township Bd. Of Educ., 63 IDELR 78 (D.N.J. 2014).** Recognizing that a former high school student with autism did not attend college, pursue a career in computer animation, or live independently as contemplated in his postsecondary transition plan, the District Court nonetheless rejected the parent's claim that the plan was inappropriate. The court held in an unpublished decision that the plan reflected the information available at the time of IEP development. U.S. District Judge Katharine S. Hayden explained that courts do not evaluate IEPs in hindsight. Rather, a court will consider the evaluative data available at the time of IEP formation and determine whether the student's program was reasonably calculated to provide an educational benefit. As such, Judge Hayden observed, the parent needed to show that the student's transition plan was inadequate at the time of formation. The court ruled that the parent failed to meet that standard. Not only did the IEP identify agencies that offered vocational services as required by state law, but the evidence showed that the district administered a career interest inventory and entered the results into its college and career planning software program. Furthermore, as the ALJ had observed, no member of the IEP team had stated a belief that the student's wish to attend college and work in theater arts was unrealistic or unachievable. As for the district's purported failure to provide ≤transition services ≥, the district's special education supervisor testified that the student met with his guidance counselor about college. "[The supervisor] also testified that she 'discussed' a 'college program that included vocational training for the area of ... sound and lighting, in terms of [the student's] interest in the dramatics,' but that she did not believe that he applied to the program," Judge Hayden wrote. Determining the parent failed to meet her burden of proof, the court granted the district's motion for judgment.
2. **Jefferson County Bd. Of Education v. Lolita S., 62 IDELR 2 (N.D. Ala. 2013).** The "cookie cutter" IEP developed for a high school student with a learning disability in reading failed to provide adequate postsecondary transition services. The school district failed to conduct transition assessments of the

student, and his transition plan merely included access to services that were already available to all students. This failure to individualize the student's IEP and transition services plan constituted a denial of FAPE. The court sent the case back to a hearing officer for a determination of compensatory education services.

3. **Patterson v. District of Columbia, 61 IDELR 278 (D.D.C. 2013).** A school district quick action to correct a faulty transition services plan saved it from liability. After a hearing officer ruled that the district's transition plan was not based on appropriate transition assessments, the district immediately corrected this and developed a new transition plan with appropriate postsecondary transition goals. The evidence showed that the student made academic and behavioral progress despite the inappropriate transition plan. Therefore, the court found that the error was procedural and did not result in actual harm for which relief could be granted.
4. **Maksym v. Strongsville City Sch. Dist., 61 IDELR 294 (N.D. Ohio 2013).** A school district's placement of a student with brain damages and cerebral palsy as an aide in the school guidance office for two days a week was an appropriate transition service. The court rejected the parent's claim that the student did not actually "work" while in the guidance office, but was spending "idle time" in the placement. To bolster her claims, the parent submitted an email written by the guidance secretary to the student's teachers and asking for work so that he "wouldn't sit and do nothing" while in the guidance office. The District Court held that the determination of whether a student's postsecondary transition services offer him FAPE doesn't hinge on the quality of each component of the services in isolation. In judging the appropriateness of a transition services plan, it depends on whether those services, taken in their entirety, are reasonably calculated to enable the child to benefit. While the parent argued that no learning took place during the eighth-period assignment, she failed "to point to any requirement that every minute of every school day must provide the maximum educational benefit," U.S. District Judge Patricia A. Gaughan wrote. The evidence established that the student's IEP addressed each of his academic and vocational needs, and focused on functional skills that would help him become more independent as an adult. The court found that the placement in the guidance office was reasonably calculated to enhance the student's vocational skills and independence and could help him find productive employment after he left the public school.
5. **Pape v. Bd. Of Education of the Wappingers Cent. Sch. Dist., 61 IDELR 188 (S.D. N.Y. 2013).** A student went without transition services for six months after the State's office of vocational education informed him that his family's income exceeded the income requirements for eligibility. The court rejected the parents' attempt to hold the school district liable for this delay in receiving transition services, due to the family's admitted failure to notify the district of the problems with the state Voc-Ed office. Further, there was no evidence to support the family's claim that the six-month delay in receiving transition services was due to intentional discrimination based on the student's disability.

6. **Gibson v. Forest Hills Sch. Dist. Bd. Of Education, 61 IDELR 97 (S.D. Ohio 2013).** Teachers who were concerned that a high school student would be upset by attending a “contentious” IEP meeting violated the IDEA’s mandate to include students in the development of their transition services plan. As a result, the postsecondary transition services plan that was developed for the girl was not based on her interests and preferences, and the district also failed to conduct objective transition assessments to gain information about these areas. The court rejected the notion that the student's voluntary choices between classroom tasks that included stapling, shredding documents, and wiping tables provided an accurate picture of her interests and skills. "This informal approach to determining [the student's] postsecondary preferences and interests was not sufficient," U.S. District Judge Susan J. Dlott wrote.
7. **M.Z. v. New York City Bd. Of Education, 61 IDELR 26 (S.D.N.Y. 2013).** A New York court refused to order a school district to reimburse the parents of a student with disabilities the costs of a private placement, even though the district failed to develop and implement an appropriate transition plan. The boy’s transition services plan failed in several aspects: (1) the plan did not specify activities that would lead to the development of math and science skills; (2) the plan failed to list postsecondary activities available for the student; and (3) the plan failed to identify the individuals responsible for implementation. The court held that the transition services plan was procedurally deficit, but that the deficiencies did not cause actual harm to the student or a denial of FAPE. The IEP provided for biannual progress reports that included progress on pre-vocational goals, and listed individuals who were responsible for implementing the IEP services.
8. **Carrie I. v. Dept. of Education, State of Hawaii, 59 IDELR 46 (D. Hawaii 2012).** The school district’s failure to develop and implement an appropriate postsecondary transition services plan led to an award of funding for a private placement. The teen with autism and Landau-Kleffner Syndrome had a history of elopement, and the IEP team’s failure to address this behavioral issue rendered his IEP inappropriate. Also, the IEP team failed to develop transition services based on current and age-appropriate transition assessments. "The lack of assessments alone is enough to constitute a lost educational opportunity," U.S. District Judge J. Michael Seabright wrote. Finally, the district failed to invite a representative from the state’s vocational rehabilitation office despite evidence that these services would be appropriate and should be considered by the student’s IEP team.
9. **Dutkevitch v. PA Cyber Charter Sch., 57 IDELR 32 (3rd Cir. 2011), cert. denied, 132 S. Ct. 1750 (U.S. 2012).** A charter school that was the student’s “LEA” according to state law was responsible for providing FAPE to the student, including the development and implementation of a postsecondary transition services plan. The 3d Circuit observed that the district's failure to recommend that the student attend a vocational-technical school was not based on the student's disability. "Rather, [the district] withheld recommendation because it 'was not [the student's] LEA' and thus 'was not required to make sure [the student] received ... computer training,'" U.S. Circuit Judge Dolores Korman Sloviter wrote in an unpublished decision.

- 10. *Rodriguez v. Fort Lee Bd. Of Education*, 57 IDELR 152 (3rd Cir. 2011).** The school district developed an appropriate transition services plan for a high school student with cerebral palsy who intended to transition to college. The transition services plan listed the academic requirements and a detailed checklist to assist her in transitioning from high school to college.
- 11. *K.C. v. Nazareth Area Sch. Dist.*, 57 IDELR 92 (E.D. Pa. 2011).** Despite claiming that their daughter's postsecondary transition services were "too generalized" and "inadequate," the parents of a 20-year-old with Prader-Willi syndrome could not establish their daughter's need for compensatory education. The U.S. District Court, Eastern District of Pennsylvania held that the student's transition services were appropriate. Although the parents' rehabilitation consultant testified that the student's travel training could have been improved, the court explained that the district had no obligation to maximize the student's potential. Instead, the district only needed to ensure that the student's travel training resulted in meaningful benefits. The court pointed out that the student benefited "immensely" from her travel training services. "In particular, [an independent neuropsychologist] noted that [the student] is now able to travel around Philadelphia," U.S. District Judge Eduardo C. Robreno wrote. The court observed that the student received transition services in other areas as well. In addition to participating in employment-related classes, where she learned skills such as résumé writing and job interviewing, the student attended a life skills summer program and participated in a community services club. The court also pointed out that the student made progress on transition goals related to handling and calculating money. Concluding that the student benefited from her transition plan, the court held the district did not err in failing to provide the parents' preferred level of services. The court thus affirmed a due process decision in the district's favor.
- 12. *Tindell v. Evansville-Vanderburgh Sch. Corp.*, 57 IDELR 71 (S.D. Ind. 2011).** A school district that delayed development of a transition services plan for more than two years (until the student was 18 years old and three months prior to his graduation from high school) was still not responsible for funding a private placement for the student. The transition plan that was developed enabled the student to pass all of his coursework and be admitted to a community college. The fact that the boy met graduation requirements meant that the district had provided him FAPE. The court acknowledged that the student still was unable to use public transportation without assistance, but noted that his IEP team always believed he would need assistance in some areas of adult living. "A school district cannot be required to educate a student to a level of independence that was never contemplated by the parties in the first place," U.S. District Judge Sarah Evans Barker wrote.
- 13. *Sebastian M. v. King Phillip Reg'l. Sch. Dist.*, 56 IDELR 204 (D. Mass. 2011).** The parents of a high school student with an intellectual disability failed to win funding for a private residential placement for their son. The family unilaterally placed their son at the private facility after he had a series of "meltdowns" at home. The court rejected the parents' contention that the IEP for the student was deficient because it lacked a separate transition services plan. Although an IEP must contain statements of transition services, the court noted, it does not require

an IEP to have a stand-alone transition plan as part of an IEP. "Because transition services were mentioned in the IEPs and because transition services were actually provided to [the student], there is no error here based on transition planning," U.S. District Judge Joseph L. Tauro wrote. The court also rejected the parents' argument that the student made no progress under his IEPs. Lack of progress does not necessarily betoken an IEP's inadequacy, the court observed. Moreover, the evidence indicated that the student in fact made strides in his language skills and ability to focus. *Editor's note: The 1st U.S. Circuit Court of Appeals affirmed this decision at 59 IDELR 61.*

14. J.D.G. v. Colonial Sch. Dist., 55 IDELR 197 (D. Del. 2010). A federal court in Delaware ruled that the IEP developed by the school district for a high school boy with Down Syndrome was appropriate because it focused on the acquisition of functional and independent living skills rather than academics. The student's parents objected to the IEP, believing that it should be focused on the development of academic skills (via rote memorization and repetitive academic drills) rather than functional skills. However, the court found that the student's intellectual limitations justified the focus on functional daily living skills rather than academics. Testimony indicated that the parents may not have fully grasped the limited nature of the student's capabilities. However, that was no basis for overturning the IHO's decision. Due to his age and the necessity to transition him into independent living, it was appropriate to shift the IEP's focus.

15. High v. Exeter Twp. Sch. Dist., 54 IDELR 17 (E.D. Pa. 2010). A high school junior with learning disabilities may have had her sights set on college, but that did not invalidate an IEP goal that called for her to read at a sixth-grade level by the end of the year. The U.S. District Court, Eastern District of Pennsylvania held that the goal was reasonable in light of the student's severe deficits. The court acknowledged that the student's transition plan focused on college preparedness, and included activities such as taking placement tests and attending college fairs. Still, the court rejected the parents' claim that the student's IEP goals did not match her transition plan. The court explained that the IDEA does not require a student's transition plan to dictate her IEP goals. "While it may be ideal if a transition plan influences IEP goals, a newly identified transition goal will not change the ability of a child to progress at a higher rate academically," U.S. District Judge Juan R. Sanchez wrote. The court pointed out that when the student returned to the district in 11th grade after two years of private schooling, she was reading at a fourth-grade level. Although the student continued to struggle, she was reading at a sixth-grade level by the end of her junior year. Moreover, the student received a final grade of 100 in algebra, and was writing at a near-collegiate level. Finding that the student made meaningful progress despite her ongoing deficits, the court held that her IEP was appropriate.

16. Rosinsky v. Green Bay Area Sch. Dist., 53 IDELR 193 (E.D. Wis. 2009). Testimony from a student's service providers helped a Wisconsin district to overcome allegations that it failed to offer appropriate transition services. Concluding that the student made progress toward his goal of supported postsecondary employment, the District Court held that the district provided FAPE. The court first addressed the parent's procedural challenges. Although the district did not invite representatives from a county agency to all of the student's IEP meetings, the court noted that the representatives attended the meeting at the

parent's invitation. As such, any procedural violation by the district was harmless. Moreover, the evidence showed that the district provided appropriate written notice of its refusal to include 15 to 20 hours a week of community work experience in the student's IEP. As for the substance of the transition plan, the court rejected the parent's claim that the goal of "increasing independence in the community" was too vague. Because the plan contemplated that the student would be able to work 15 to 20 hours each week in supported employment that focused on his categorizing and sorting skills and required limited customer interaction, the plan contained measurable postsecondary goals. Moreover, the student's work experience coordinator testified about the student's progress. "[The coordinator] noted that [the student] could stay on task longer in a work setting without taking a break, was adjusting to new tasks, and was focused on a task from start to finish," U.S. District Judge William C. Griesbach wrote. Similarly, the student's special education teacher testified that the student made progress in areas relating to his employability skills. Although the parent's expert testified that the student needed a greater variety of work settings, the court pointed out that the expert had not reviewed the student's transition evaluation or educational records. The court thus affirmed an ALJ's decision that the transition plan was appropriate.

17. **K.C. v. Mansfield Indep. Sch. Dist.**, 52 IDELR 103 (N.D. Texas 2009). Allegations that a Texas district disregarded a teenager's interest in music when developing her transition plan were not enough to support a request for tuition reimbursement. The District Court held that the transition plan, which reflected the student's strong interests in fashion and child care, was reasonably calculated to provide FAPE. As a preliminary matter, the court rejected the parents' argument that the FAPE standard identified in *Board of Education of the Hendrick Hudson Central School District v. Rowley*, 553 IDELR 656 (U.S. 1982), was no longer valid. Although the parents claimed that the 1997 IDEA amendments imposed a higher standard on school districts, the District Court pointed out that the 5th U.S. Circuit Court of Appeals continues to apply the *Rowley* standard. Turning to the merits of the parents' claim, the court found that the transition plan was appropriate. An occupational assessment conducted in the student's junior year showed that she had both a high interest and a high skill level in the fields of fashion, child care, and child development. "[The student] also had a high interest score in the area of performing arts, but her skill score in this area was in the 'very low' range," U.S. District Judge Terry R. Means wrote. Based on the assessments, the IEP team developed a transition plan that called for the student to work in a clothing store -- a job that she enjoyed and performed well. The transition plan also called for the student to work as a classroom aide in an elementary school music class. While that placement was discontinued the following year due to the student's dissatisfaction with the position, the district included one-to-one music instruction in the student's IEP. The court concluded that the transition plan reflected the student's skills and interests, and included a series of practical goals that would help her transition into life after high school. The court thus held that the district had no obligation to pay for the student's placement in a music academy for students with cognitive disabilities.
18. **Virginia S. v. Dept. of Education, State of Hawaii**, 47 IDELR 42 (D. Hawaii 2007). The Hawaii ED did not violate the IDEA when it developed a generic transition plan for a 16-year-old student that could have applied to almost any

other high school student. Concluding that the plan "provide[d] a basic framework sufficient to ensure that [the student] would receive transition services that benefit[ed] her education," the U.S. District Court, District of Hawaii determined that the ED's procedural error was harmless. The court recognized that the district did not consider the student's individual needs, strengths, preferences or interests when it developed the transition plan. However, the court pointed out that the plan identified three goals for the student: graduating high school, attending a college or university, and obtaining employment in the community. "There is no doubt that [the student] would receive educational benefits from the transition services provided," U.S. District Judge J. Michael Seabright wrote. Under the plan, the court observed, the student would receive assistance with the college planning process and the opportunity to explore career options. The court also noted that the IEP contained measurable goals and objectives, and that the ED considered the parents' opinion when deciding the student's placement. Determining that the student's IEP would not result in the loss of an educational benefit, the court affirmed a decision that the district offered the student FAPE.

19. **Susquehanna Twp. Sch. Dist. v. Frances J., 39 IDELR 5 (Pa. Cmmwlth Ct. 2003).** The district provided private placement for a high school senior who was diagnosed with dyslexia, memory disorder and ADHD. Pursuant to the IEP, the district was also obligated to provide the student with a one-year post-secondary, college prep program. The court agreed with the parents that the district failed to provide the services and therefore denied the student FAPE. When the district claimed the student was ready to graduate, the parents objected, pointing out that he had not received the transitional services. In an attempt to appease the parents, the district prepared a new IEP, which called for a special education placement rather than transitional services. Again, the parents objected. The state court upheld a DP ruling for the parents, not only determining that the district failed to properly implement the IEP, but it also failed to consult with the parents or obtain their consent before changing the transitional services. The court rejected the district's assertion that the IEP only required that it provide the student with "the opportunity and skills" to apply to the college prep program, not to obtain and pay for the placement. Not so, said the court; such a *de minimis* benefit did not meet IDEA requirements. The court ordered the district to reimburse the parents for the year the student spent in the program at their own cost, and to provide transitional services as specified in the IEP as compensatory education.
20. **Pace v. Bogalusa City Sch. Bd., 34 IDELR 116 (E.D. La. 2001).** The court found nothing to support charges the district denied a student FAPE by failing to provide him with adequate transition services, accommodations or educational benefit. The student and his parent, together with state and local agencies, were given opportunities to participate in transition decisions, and the student made positive academic and nonacademic gains from the district's program. The district satisfied its IDEA obligations by incorporating individual transition plans in the student's IEPs. The student was taught in the LRE because he attended his normally assigned school and was mainstreamed as much as possible with his peers. The district also accommodated the student's physical needs.

III. RELEVANT ARIZONA AND NINTH CIRCUIT RULINGS

1. **C.B. v. Garden Grove Unified Sch. Dist., 63 IDELR 122 (9th Cir. 2014).** Given that a teenager with autism had not attended public school for three years, a California district's proposal to place him in a small group setting under a 30-day interim IEP was not inappropriate. The 9th Circuit affirmed the District Court's ruling at 114 LRP 24199 that the placement offer comported with the IDEA's procedural and substantive requirements. The three-judge panel noted that the student had spent the previous three years receiving one-to-one instruction from a private tutor. Based on the student's IEP goals, which required interaction with peers, as well as the guardian's statements that the student functioned appropriately in small group settings, the team's suggestion to place the student in a small group setting for 30 days was not unreasonable. "Especially considering that [the student] had not been in the District for three years and District personnel had only one opportunity to observe [the student] before the June IEP meetings, the District's proposed placement as an *interim* placement was appropriate," the three-judge panel wrote in an unpublished decision. The 9th Circuit also rejected the parent's claim that the district predetermined the student's placement. Not only did the district members of the IEP team listen to the student's private providers, the court observed, but they collaborated with those providers in developing the student's goals. That collaboration showed the district had an open mind about the student's placement.
2. **R.R. v. Oakland Sch. Dist., 62 IDELR 287 (N.D. Cal. 2014).** A California district's failure to include a postsecondary transition plan in the IEP it developed for a student with multiple disabilities 11 months before his 16th birthday did not entitle the parent to relief for an IDEA violation. Noting that the student would not turn 16 for another three months, the U.S. District Court, Northern District of California granted the district's motion to dismiss the parent's postsecondary transition claim. The district argued that because the student was only 15 years old, it still had plenty of time to convene an IEP meeting and develop a postsecondary transition plan. While the court did not expressly respond to the district's argument, it did point out that the student's 16th birthday was still three months away. In addition, the court observed that the parent's complaint did not set forth specific facts showing that the district violated its duty to develop a postsecondary transition plan. Concluding the parent failed to state a claim, the court granted the district's motion to dismiss. However, the court recommended that the district convene an IEP meeting so the student would have an appropriate postsecondary transition plan in place on his 16th birthday. The court also dismissed the parent's Section 504 claim for postsecondary transition planning, determining that the student did not have a right to such services under the statute.
3. **J.L. v. Mercer Island Sch. Dist., 53 IDELR 280 (9th Cir. 2010).** A statement in IDEA 1997 that defined transition services as an "outcome-oriented process" did not alter the standard of FAPE established in *Rowley*. In an amended version of its opinion at 52 IDELR 241, the 9th Circuit reaffirmed its position that the "basic floor of opportunity" standard still applies. The court noted that Congress has not altered the IDEA's definition of FAPE in response to *Rowley*. Nor has Congress expressed disapproval of the Supreme Court's ruling. Although the 1997 amendments to the IDEA stated that transition services must be "designed

within an outcome-oriented process," the 9th Circuit agreed with the 1st U.S. Circuit Court of Appeals "that there is no plausible way to read the definition of transition services as changing the [FAPE] standard." *See T.B. and E.B. ex rel. N.B. v. Warwick Sch. Committee*, 40 IDELR 253 (1st Cir. 2004). The 9th Circuit observed that the District Court appeared to have misinterpreted Congress' statements regarding transition services and the need to improve educational results for children with disabilities. "Had Congress sought to change the free appropriate public education 'education benefit' standard ... it would have expressed a clear intent to do so," U.S. Circuit Judge Robert R. Beezer wrote in the amended opinion. The 9th Circuit thus reiterated its earlier decision that the District Court's decision at 46 IDELR 273 was in error.

4. **E.R.K. v. State of Hawaii, Dept. of Educ., 61 IDELR 241 (9th Cir. 2013).** The Hawaii ED could not justify a state law that terminated students' eligibility for IDEA services at age 20 simply by claiming that its adult education programs were not the equivalent of a high school education. Concluding the ED made a free public education available to nondisabled individuals ages 20 and older, the 9th Circuit held that Hawaii's age limit on public education violated the IDEA. The 9th Circuit noted that a state only needs to provide IDEA services to students with disabilities ages 18 to 21 if it makes a free public education available to nondisabled individuals in that same age range. While the ED claimed its GED and competency-based programs were so different from the traditional high school curriculum that they could not qualify as secondary education, the court pointed out that both programs allowed adults to earn high school diplomas. "Nothing in the IDEA ... supports the proposition that a program constitutes 'secondary education' or 'free public education' only if it is structurally identical to the ordinary public high school curriculum offered to nondisabled students," U.S. Circuit Judge Dorothy W. Nelson wrote for the three-judge panel. The 9th Circuit also rejected the notion that the IDEA's definition of "transition services" which lists "adult education" as an example of a postsecondary activity precluded it from classifying Hawaii's adult education programs as secondary education. As for the ED's claim that it did not "usher" or "steer" nondisabled adults into the GED and competency-based programs, the 9th Circuit observed that the only question was whether such services were available. "If Hawaii legislators wish to shut the door to students once they turn 20, that is their prerogative but they must shut them to all students, regardless of disability," Judge Nelson wrote. The 9th Circuit reversed the District Court's ruling at 58 IDELR 214 that the state law terminating IDEA eligibility at age 20 was valid. However, the 9th Circuit affirmed the District Court's entry of judgment for the ED on the students' Section 504 and Title II claims, citing the students' failure to identify a reasonable accommodation that would allow them to participate in the adult education programs.

IV. OSEP/OSERS POLICY RULINGS

1. **Letter to Dude, 113 LRP 37277 (OSEP 2013).** It's up to a student's IEP team whether to include attendance at a college or university as a component of a student's

postsecondary transition plan, OSEP informed a school attorney. Whether the district may use Part B funds to cover the cost of the classes, however, hinges on state law. The attorney asked several questions, including whether the IDEA requires districts to include language in a transition plan indicating that a student shall have access to a junior college, college, or university, upon the student's parents' request. Decisions regarding the content of a transition plan belong to the IEP team, including the parent, OSEP observed. The team must consider the student's specific needs, taking into account the student's strengths, preferences, and interests. 34 CFR 300.43(a)(2). However, the team is not obligated to incorporate a particular service into a transition plan simply because the parent or student requests it. Should the IEP team determine that a specific student requires classes at a postsecondary institution, whether as an auditor or for credit, districts must look to whether, under state law, such attendance is considered secondary school education for students in grade 12 or below. "If the IEP Team determines that services in a community, technical, or other postsecondary program are necessary to assist the secondary school student in reaching his/her postsecondary goals and receiving FAPE, and those services are considered secondary school education ... the student's IEP Team could designate those as transition services and the school district could pay for those services with IDEA Part B funds," OSEP Director Melody Musgrove wrote. On the other hand, OSEP explained, if the state does not consider such attendance to be part of secondary school education, districts in that state may not use Part B funds to pay for it.

2. Letter to Spitzer-Resnick, Swedeen, and Pugh, 59 IDELR 230 (OSEP 2012). Although segregated employment is not prohibited by the IDEA, IEP teams need to take a hard look at whether it's necessary before placing a student there as part of a transition program. OSEP told a Wisconsin disability rights group that a transition placement, including a work placement, is no different than any other educational placement in the sense that it may not be unnecessarily restrictive. That is, before assigning a student to segregated employment, the IEP team must look at whether there are steps it could take that would enable the student to work alongside nondisabled individuals. "[W]hen an IEP Team includes a work placement as part of the student's transition services, the IEP team must consider, and include in the IEP, as appropriate, any supplementary aids and services needed to enable the student to participate with other students with disabilities and nondisabled students in the work placement," OSEP Director Melody Musgrove wrote. If the student cannot be satisfactorily placed in integrated employment, even with supplementary aids and services, then the IEP team may assign the student to segregated employment if determined appropriate based on the student's individualized needs.

3. Questions and Answers on Secondary Transition, 57 IDELR 231 (OSERS 2011). Recognizing that postsecondary goals relating to training and education may sometimes overlap, OSERS stated that IEP teams may develop combined postsecondary goals in those areas where appropriate. However, OSERS indicated that postsecondary goals relating to employment must be separate from those relating to training and education. In a revised Q&A on postsecondary transition, OSERS observed that transition plans must include postsecondary goals in the areas of training, education, employment, and, if appropriate, independent living skills. While neither the IDEA nor the Part B regulations define "training" and "education" in the context of postsecondary transition, OSERS noted that the two areas could be interpreted as overlapping in some instances. "For example, for a student whose postsecondary goal is teacher certification, any program providing teacher

certification would include education as well as training," OSERS wrote. In determining whether training and education goals overlap, OSERS observed, the IEP team should consider the student's unique disability-related needs and the student's plans after high school. OSERS pointed out that IEP teams are not prohibited from developing separate goals for training and education and that separate goals may be appropriate in some instances. Furthermore, because employment is distinct from training and education, IEP teams cannot combine a student's postsecondary employment goals with training and education goals.

4. Questions and Answers on IEPs, Evaluations, and Reevaluations, 111 LRP 63322 (OSERS 2011). Even if an IEP team begins planning a student's postsecondary transition services before the student reaches the minimum age under state or federal law, it has the option of developing combined goals for training and education. OSERS noted in a revised Q&A that the statutory and regulatory requirements for transition planning do not depend on the student's age. OSERS observed that postsecondary goals relating to training and education may overlap for some students. For example, a student seeking certification as a teacher would receive education and training in a teacher certification program. In such instances, it would not be necessary for the IEP team to set forth separate goals for education and training. "If the IEP team determines that separate postsecondary goals in the areas of training and education would not result in the need for distinct skills for the student after leaving high school, the IEP team can combine the training and education goals of the student into one or more postsecondary goals addressing those areas," OSERS wrote. Because the requirements for transition goals and services apply to all postsecondary transition plans, regardless of when the district begins planning, OSERS reasoned that an IEP team could combine goals related to training and employment even if the student has not reached the mandatory minimum age for transition planning. However, OSERS pointed out that the IEP team would need to develop separate goals for employment regardless of whether it combined the student's training and education goals.

5. Letter to Heath, 54 IDELR 171 (OSEP 2009). Districts may not exclude postsecondary employment goals from a student's transition plan based strictly on the nature of the student's disability, OSEP informed a Maryland ED official. When determining what postsecondary goals to address, districts must look to the child's individualized needs, and not exclusively to the severity of the child's medical condition or developmental deficits. The explanation came in response to the official's request that OSEP "waive" the requirement for including a postsecondary goal in employment for students with disabilities who have severe medical conditions and developmental needs. OSEP pointed out that the IDEA implementing regulation at 34 CFR 300.320(b)(1) states that IEPs must include "appropriate measurable postsecondary goals based upon age appropriate transition assessments related to training, education, employment, and where appropriate, independent living skills." The only area districts may leave out when discussing postsecondary goals is independent living skills. 71 Fed. Reg. 46668 (2006). "While including employment goals in the IEPs of some students with severe medical conditions and developmental needs may be upsetting to their parents, the IDEA does not provide an exception for this requirement based on the nature of the child's disability; and OSEP does not have the authority to waive this statutory requirement," Acting Director Patricia J. Guard wrote. OSEP further informed the official that districts and states must continue to include students with severe medical conditions or developmental needs when

reporting on their provision of transition services under State Performance Plan Indicator 13.

6. Questions and Answers on Secondary Transition, 52 IDELR 230 (OSERS 2009). Responding to requests for clarification concerning the secondary transition requirements of the 2006 and 2008 Part B regulations, OSERS created a Q&A to shed light on the scope of districts' duties to create summaries of a child's academic achievement and functional performance. OSERS noted that the regulations do not require summaries of performance (SOPs) for students who leave secondary school with a GED credential or alternate diploma. However, states are free to require them under those circumstances. If they do so, OSERS recommended that, to avoid confusion, the LEA notify the student and parents that the student's eligibility does not terminate until he receives a regular diploma or exceeds the age of eligibility. Furthermore, OSERS observed that the SEA must notify OSEP in writing, as well as its LEAs, of the additional requirement, in compliance with 34 CFR 300.199(a)(2). Addressing the required content of an SOP, OSERS noted that the regulations require only that it include recommendations on how to assist the child in meeting his or her postsecondary goals. Beyond that, state and local education officials may determine appropriate content based on the child's individual needs and postsecondary goals. Furthermore, districts may, but are not required to, include information in the SOP to assist other programs, such as colleges and the Vocational Rehabilitation Services program, to determine the student's eligibility for services or accommodations.

V. LESSON LEARNED

1. Always make sure to invite representatives from other agencies.
2. Always include the student in the development of his/her transition services plan.
3. Make sure to develop transition goals that are individualized and “special.”
4. Transition services must be based on appropriate transition assessments.
5. Nothing in the IDEA requires LEAs to ensure that every single minute of transition services time is used for productive activities.
6. LEAs are not required to guarantee career success.
7. LEAs are not required to guarantee college admission.
8. Functional and daily living skills may be the focus of some student's transition services.
9. Transition services may be addressed in the body of the student's IEP rather than in a separate “Transition Services Plan” document.

10. The FAPE standard applies to the development and implementation of transition services.